

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CoxCom, Inc. d/b/a Cox Communications)	CSR 7864-E
New England)	
)	
Petition for Determination of Effective)	
Competition in Nineteen Franchise Areas in		
Connecticut		

MEMORANDUM OPINION AND ORDER

Adopted: February 18, 2010

Released: February 19, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. CoxCom, Inc. d/b/a Cox Communications New England, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7 and 76.905(b)(4) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by The Southern New England Telephone Company d/b/a AT&T Connecticut (“AT&T”), hereinafter referred to as “Competitor.” The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the Petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(4).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition if a local exchange carrier (“LEC”), or its affiliate, offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services offered in that area are comparable to the video programming services provided by the competing unaffiliated cable operator.⁶ This test is otherwise referred to as the “LEC” test.

4. The Commission has stated that the incumbent cable operator must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not completed its build-out; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁷ It is undisputed that these Communities are served by both Petitioner and Competitor, a local exchange carrier, and that these two MVPD providers are unaffiliated. The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming⁸ and is supported in this petition with copies of channel lineups for Competitor.⁹ Finally, Petitioner has demonstrated that the Competitor has commenced providing video programming service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.¹⁰

5. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that its cable system serving the Communities has met the LEC test and is subject to effective competition.

⁶See 47 U.S.C. § 543(l)(D).

⁷See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305-06, ¶¶ 13-16 (1999) (“*Cable Reform Order*”).

⁸See 47 C.F.R. § 76.905(g). See also Petition at 17-18.

⁹See Petition at 18, Exhibit 13.

¹⁰See *Cable Reform Order*, 14 FCC Rcd at 5305-06, ¶¶ 13-16. See also Petition at 8-17.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by CoxCom, Inc. d/b/a Cox Communications New England **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert
Senior Deputy Chief, Policy Division, Media Bureau

¹¹47 C.F.R. § 0.283.

ATTACHMENT A**CSR 7864-E****COMMUNITIES SERVED BY COXCOM, INC. d/b/a COX COMMUNICATIONS
NEW ENGLAND**

Communities	CUIDS
Meriden	CT0004
Cheshire	CT0006
Southington	CT0008
Manchester	CT0031
Glastonbury	CT0032
Newington	CT0033
Rocky Hill	CT0034
Wethersfield	CT0035
South Windsor	CT0128
Enfield	CT0129
Hartland	CT0130
Granby	CT0131
East Granby	CT0132
Suffield	CT0133
Windsor Locks	CT0134
East Windsor	CT0135
Somers	CT0136
Stafford	CT0137
Union	CT0138